IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6440 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAMLESHKUMAR @ TAPU SHANKARLAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6440 of 2001

MR DM THAKKAR for Petitioner No. 1

MR SS PATEL AGP for Respondents No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 11/10/2001

ORAL JUDGEMENT

1. In exercise of the powers conferred under Section 3 (2) of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 ('the Act' for short), the District Magistrate, Mehsana, vide order

dated July 21, 2001, Annexure A to the petition, detained the petitioner - detenu.

2. The averments made in the petition and the grounds of detention manifest that on July 6, 2001, as per information received, the shop owned by one Manubhai Nathalal was inspected and stock of 26 Kgs. wheat, 13 bags of cement and 8 tins of Sagar ghee was seized. As per statement of owner Manubhai Nathalal, the shop was rented to the petitioner at a monthly rent of Rs.100/- As per the opinion of Godown Inspector and Supply Inspector, the sample of wheat was similar to the wheat meant for public distribution through public distribution system. The stock was seized as unclaimed goods by the authority. Thus, according to the detaining authority, the petitioner was dealing in essential commodities without any licence in an unauthorized and illegal manner, prejudicial to the maintenance of civil supplies and, therefore, the petitioner is detained under the Act in exercise of powers under Section 3 (2) of the Act.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing and setting aside the impugned order of detention and to set him at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. However, Mr. Thakkar, learned advocate for the petitioner, has restricted his arguments to the effect that there is a delay in forwarding the representation made by the petitioner to the detaining authority, to the State Government and Central Government and this delay itself has vitiated the order of detention. He contended that the representation dated August 2, 2001 sent to the District Magistrate, Mehsana was admittedly received by the authority on August 6, 2001 but it was forwarded to the State Government and Central Government on August 10, 2001 and, therefore, there is a delay of four days in forwarding the representation to the State Government and Central Government. He does not rest here. He further contented that even it was decided by the State Government on August 16, 2001 and, therefore, there is a delay of six days in deciding the said representation and, therefore, according to him, on this sole ground the order of detention is vitiated and the petition deserves to be allowed by quashing and setting aside the impugned order of detention and the petitioner may be released forthwith.

5. Mr. S.S. Patel, learned AGP who appears on behalf of respondent Nos.1 to 3 contested the petition by filing reply affidavits one which is sworn by P.G. Vyas, Deputy Secretary to the Government of Gujarat, Food, Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar and the second one sworn by A.S. Patel, District Magistrate, Mehsana. Similarly, Ms. Davavala, learned advocate for respondent No.4 contested the petition by filing affidavit in reply sworn by S.L. Meena, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi. Mr. Patel contended that in fact there is no delay in forwarding the representation by the detaining authority to the State Government and Central Government. He tried to explain that the said representation was mis-sent to another branch instead of civil supplies department which thereafter was received by the detaining authority on 10.8.2001 and, therefore, there is no delay on the part of the detaining authority as on the same day it was forwarded to the State Government and Central Government.

6. Ms. Davavala, learned advocate for respondent No.4, contended that immediately on receipt of the representation from the detaining authority, the Central Government has decided the representation promptly and therefore there is no delay on the part of the Central Government in deciding the representation. She, therefore, urged to dismiss the petition.

7. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition and the documents annexed therewith and the impugned order.

8. On having perusal of the relevant papers it is seen that the detenu had made a representation on August 2, 2001 to the District Magistrate, Mehsana and there is no doubt that the said representation was received by the Detaining Authority on August 6, 2001. There is also no dispute to the fact that the said representation was forwarded to the Central Government and State Government by the detaining authority on August 10, 2001. The said fact can be assembled from the reply affidavits filed on behalf of the State Government and Central Government and by the Detaining authority. The only question which calls for determination is as to whether the representation which was sent by the detenu to the District Magistrate if it was mis-sent by the office to the table not concerned with the said business can be

considered for deciding the matter that there is no delay in sending the representation to the State Government and Central Government on the part of the detaining authority. It may be noted that so far as detenu's right under Article 22 (5) of the Constitution is concerned, it is unfettered and it has nothing to do with the indoor arrangement of the detaining authority and, therefore, it is held that there is a delay of four days in sending the representation by the District Magistrate to the State Government and Central Government.

9. Before a Division Bench of this court similar question arose in the case of Urmilaben Gandhi v. Commissioner of Police, Surat City and others, 1994 (2) GLH (UJ) 10. In the said case delay of five days in considering the representation was not properly explained and hence continued detention was held invalid.

10. In the case of Harish Pahwa v. State of U.P. AIR 1981 SC 1126, the Supreme Court has observed that representation made by the detenu must be considered immediately and delay invalidates the detention.

11. Applying the aforesaid principles to the facts of the present case, at the cost of repetition, be it stated that the representation which was sent by the detenu on August 2, 2001 was received by the detaining authority on August 6, 2001 and it was forwarded to the State Government and Central Government on 10.8.2001 and therefore there is admittedly a delay of four days. The learned AGP tried to explain the said delay which is not swallowable and as explained in the earlier paragraphs of this judgment, the detenu's right under Article 22 (5) of the Constitution is unfettered as he has nothing to do with the indoor arrangement of the detaining authority with respect to allotting work to the Clerk. Though it was mis-sent to the concerned clerk who was not dealing with the said branch also shows non-application of mind on the part of the staff of the authority and it can be described as negligence which cannot be condoned and on his ground alone the order of detention is vitiated and the petition deserves to be allowed and the impugned order of detention requires to be quashed and set aside and the petitioner is required to be set at liberty forthwith.

11. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection

with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)

(karan)